

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.192 of 2004**

Arising Out of PS. Case No.-68 Year-1990 Thana- GAMAHARIYA District- Madhepura

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1. Baiju Rishideo, S/o- Late Jamun Rishideo.
 2. Gulten Rishideo, so of late Jamun Rishideo.
 3. Arjun Rishideo, son of late Jamun Rishideo.
 4. Sadanand Rishideo, son of Shree Baiju Rishideo.
All resident of village – Piprahi, P.S.- Gamharia, District -
Madhepura

... .. Appellants

Versus

The State of Bihar

... .. Respondents

Appearance :

For the Appellants : Mr. Rahul Kumar Mishra, (Amicus Curiae)
For the State : Mr. Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 04-12-2025

Heard learned *Amicus Curiae* for the appellants and
learned APP for the State.

2. The appellants have challenged the judgment of conviction and order of sentence dated 31.01.2004 passed by the learned 1st Additional Sessions Judge, Madhepura, in Sessions Trial No.139 of 1992, arising out of Gamaharia P.S. Case No.68 of 1990, whereby the appellants have been convicted under sections 307/149, 379, 148, 447, 323 and 341 of the Indian Penal Code (for short “I.P.C.”). By the impugned judgment, the appellants have been imposed the following sentences:-



Section under the I.P.C	Sentence imposed by the Trial Court
307/149 I.P.C	Rigorous Imprisonment of five years
148 I.P.C	Rigorous Imprisonment of One year
379 I.P.C	Rigorous Imprisonment of Two years
323 I.P.C	Rigorous Imprisonment of Six months
447 I.P.C	Simple Imprisonment of two months
341 I.P.C	Simple Imprisonment of three months

All the sentences were directed to run concurrently and all the appellants were remanded to jail for serving out their sentences.

3. During the pendency of this appeal, a coordinate Bench of this Court, upon receiving the report from the Superintendent of Police, Madhepura, regarding the death of appellants nos. 1 and 2, namely, Baiju Rishideo and Gulden Rishideo, respectively, *vide* order dated 20.02.2025, had directed for deleting the names of the aforesaid appellants from the cause title. Accordingly, the present appeal stands abated against the aforesaid two appellants. Now, it is restricted only against the appellants nos. 3 and 4.

4. The prosecution case, as stated by the informant, Bindi Pandit, is that on 29.11.1990 at about 02.00 P.M while he was harvesting the paddy crops of one Janardan Prasad Yadav, suddenly all the accused persons armed with *lathi*



and *Bhala* came there and surrounded him and thereafter, Jamun Rishideo (since deceased) ordered to kill the informant. Upon which, Baiju Rishideo and others surrounded the informant with an intention to kill him and thereafter, assaulted him with *lathi* and due to which, the tooth of the informant started bleeding. The other accused persons also assaulted the informant indiscriminately by *lathi*. Thereafter, the accused Jamun Rishideo wrapped a towel on the neck of the informant and started dragging him, due to which the informant suffered suffocation. On raising alarm, the local people came and saved him. It has also been alleged that the accused persons took away eight bundles of paddy. It has further been stated that prior to the present incident, there was a dispute between the parties over cutting of *bamboos*, for which a case was lodged and the accused persons asked the informant to withdraw the case and when the informant refused to do so, the occurrence took place. Based on the aforesaid statement, the present F.I.R. has been lodged.

5. During the course of trial, altogether eight witnesses were examined in support of the prosecution case, which are as under: -

P.W.-1	Sada Nand Yadav (Formal)
P.W.-2	Shiv Narayan Yadav



P.W.-3	Mahendra Yadav
P.W.-4	Deo Narain Yadav
P.W.-5	Shibu Rishideo
P.W.-6	Bindi Pandit (informant)
P.W.-7	Dr. J.B.Singh (Doctor)
P.W.-8	S. Toppo (A.S.I. and I.O.)

6. Apart from the oral evidences, the documentary evidences were also exhibited on behalf of the prosecution, which are as follows:-

Exhibit- 1	Formal First Information Report
Exhibit- 2	<i>Fardbeyan</i>
Exhibit- 3	Charge-sheet

7. After completion of prosecution evidence, the statement of the appellants were recorded under section 313 of the Code of Criminal Procedure, in which the appellants denied the allegations and claimed to be tried.

8. The trial court, upon appreciation of the evidence adduced at the trial, has found the appellants guilty of the offences and have sentenced all the accused persons to imprisonment, as noted above, by its impugned judgment and order.

9. The learned *Amicus Curiae* for the appellants has submitted that the impugned judgment of conviction and order of sentence is erroneous since none of the ingredients of the offences are made out against the appellant nos. 3 and 4. It



has been submitted that no injury report was brought on record during the trial and therefore, the conviction of the appellants cannot be sustained in the eye of law. It is emphasized by learned *Amicus Curiae* for the appellants that the assertion by the informant that the assault has resulted into oral injuries is not supported by the investigation since neither the tooth nor the blood-stained soil was seized or produced in the trial court and the investigating officer did not find any blood-stained soil nor did he find any broken tooth at the place of occurrence.

10. It has further been submitted that while convicting the appellants, the trial court has failed to consider the fact that the prosecution has failed to establish the alleged place of occurrence either through oral or documentary evidence. It has also been submitted that so far the allegation with regard to theft of paddy crops is concerned, P.W-2 in his statement has deposed that the paddy bundles were taken away by the females but their identities could not be ascertained.

11. It has been submitted by learned *Amicus Curiae* for the appellants that even otherwise the charge under section 379 of the Indian Penal Code is not made out in view of the fact the land on which the paddy crops were grown was actually belonging to the appellants and therefore, no offence of



theft is made out when the property belongs to the appellants themselves.

12. It has also been argued that the impugned judgment of conviction is also bad in law since the learned trial court has failed to exclude from its consideration the statements of prosecution witnesses made before the Police under section 161 of the Cr.P.C., which is inadmissible. Further, neither did the learned trial court put these circumstances to the appellants at the stage of section 313, nor did it consider properly the statements of the accused to the extreme prejudice of the defence.

13. Lastly, the learned *Amicus Curiae* for the appellants have submitted that none of the persons who were harvesting the paddy crops have either been named or have been examined during the trial and therefore there is no evidence to prove the fact of harvesting the paddy crops by the prosecution.

14. Learned APP for the State has supported the impugned judgment of conviction and order of sentence and has submitted that the trial court after appreciating the evidence on record has passed the impugned judgment of conviction and sentence and therefore, this Court may not interfere with the impugned judgment.



15. I have considered the submissions of the parties and perused the materials on record.

16. From the perusal of the records including the F.I.R. it appears that the date of occurrence is 29.11.1990 and the time of occurrence is 02:00 P.M. The *fardebeyan* of the informant was made available to the Police on 30.11.1990. The police station is at a distance of 8 kms. from the place of occurrence. The FIR has been sent to the court from the police station on 02.12.1990 and the same has been seen by the Chief Judicial Magistrate on 03.12.1990. Therefore, it transpires that the *fardebeyan* of the informant was submitted to the police on 30.11.1990 in the afternoon but the same has been sent to the court by the police after an unexplained delay of three days and there is no justification for this delay and it appears that the F.I.R. is ante-dated and ante-time and the authenticity and the genuineness of the F.I.R. is doubtful.

17. The Hon'ble Supreme Court in the case of *Marudanal Augusti vs. State of Kerala* reported as (1980) 4 SCC 425 has held that delayed dispatch of the F.I.R. to the Magistrate would throw serious doubt on the case of the prosecution since any unexplained delay could cast apprehension for the Court to consider the possibility of



improvement or distortions to the case of the prosecution. Therefore, where the F.I.R. appears to be ante-dated, the entire fabric of the prosecution case would crumble and collapse.

18. Further, there is no seizure of weapon used in committing the crime by the I.O. of the case. He has not seized the blood soaked cloths of the injured or the blood soaked soil. Moreover, the injury report has not been produced and proved by the prosecution and there is also a preexisting land dispute between the parties.

19. In the opinion of this Court, the conviction of the appellant nos. 3 and 4 cannot be sustained on the following counts. *Firstly*, delayed and doubtful F.I.R, *secondly*, the absence of the weapons, blood-soaked cloths and the blood-soaked soil and *thirdly*, non-production of the injury report. These facts create serious doubt over the prosecution story. Moreover the author of the injuries are appellant nos.1 and 2, who have died during the pendency of this appeal, and not appellant nos.3 and 4.

20. In absence of incriminating materials against the appellants nos. 3 and 4, this Court is of the considered view that the prosecution has not able to prove its case beyond reasonable doubt and therefore, they deserve acquittal.



21. Accordingly, this appeal stands allowed. The impugned judgment of conviction and order of sentence dated 31.01.2004 passed by the learned 1st Additional Sessions Judge, Madhepura, in Sessions Trial No.139 of 1992, arising out of Gamaharia P.S. Case No.68 of 1990, is hereby set aside.

22. The appellant nos. 3 and 4 are acquitted of all the charges levelled against them. They are discharged from the liabilities of their bail bonds.

23. The Patna High Court Legal Services Committee is hereby directed to pay an amount of Rs.10,000/- (Rupees Ten Thousand Only) to Mr. Rahul Kumar Mishra, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of the present appeal.

(Sandeep Kumar, J)

Pawan/-
P. Kumar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	22.12.2025
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